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Nov. 27, 2007

Brody, O'Connor & O'Connor, Esqs.  
7 Bayview Avenue  
Northport, N.Y., 11768  
Attn: Ms. Nicole Marmanillo, Esq.

THIRD GOOD FAITH LETTER

RE: ORTIZ v. WALLMART  
07-CV-6020  
Former Supreme Court, Bronx County, index no. 15689/07

Dear Ms. Marmanillo:

I have reviewed the discs that you provided, and thank you for same. However, there is additional discovery that, if not provided, could result in Court intervention.

Please respond to the outstanding Notices for Discover and Inspection to avoid unnecessary motion practice:

1. All leases or subleases (including riders and amendments) regarding the Premises in effect on the date of the accident. [**THE LEASE SHOULD SHOW THE STORE'S RESPONSIBILITY FOR CLEANING. PLEASE PROVIDE THE LEASE FOR THE ACCIDENT LOCATION IN EFFECT ON THE DATE OF THE ACCIDENT.**]
2. All contracts between the Defendants regarding the Premises in effect on the date of the accident.
3. [Response adequate.]
4. [Response adequate.]
5. [Response adequate.]
6. [Response adequate.]
7. All contracts, subcontracts, leases, subleases, records, documents, memoranda, notes, correspondence, reports, repair orders, logs, field reports, progress reports, purchase orders, schedules, policies, procedures, rules, regulations, instructions, guidelines,

directives, invoices, bills, permits, diagrams, work permits, blueprints, architect's designs, schematics, diagrams, job meeting minutes, records referable to work done pursuant to permits and permit applications, work proposals, or other documents regarding the service, cleaning, sweeping, inspection, repair and maintenance of the Premises for the **five years** period prior to the accident. **[THE DOCUMENTS THAT YOU PROVIDED DO NOT CONTAIN THE MAINTENANCE RECORDS FOR THE PARTICULAR STORE BEFORE THE ACCIDENT. YOU PROVIDED VARIOUS TRAINING MANUALS, ETC., BUT YOU DID NOT PROVIDE SPECIFIC CLEANING RECORDS FOR THE PARTICULAR STORE.]**

8. ....
9. ...
10. All records, documents, logs, schedules, policies, procedures, invoices, bills, or other written information regarding the lighting and lights inside of the Premises for the one year period prior to the accident. **[Paragraph 6 of the Bill of Particulars alleges, *inter alia*, inadequate lighting.]**
11. All documents, records, pleadings, notices of claim, correspondence, and log books regarding any written or oral complaints, other accidents, or other litigation, regarding the conditions complained of in the Complaint, or similar conditions, at the Premises during the **five** years before the subject accident. **[Paragraph 7 of the Bill of Particulars alleges, *inter alia*, notice of recurrent hazardous conditions. Therefore, these records are discoverable. Dorsa v. National Amusements, Inc., 6 A.D.3d 652 (2<sup>nd</sup> Dept. 2004)(maintenance records regarding recurrent conditions). See also Mann v. Cooper, 816 N.Y.S.2d 45 (1<sup>st</sup> Dept. 2007)(pleadings and Bills of Particulars for similar litigation; customer complaints); Marte v. Brooklyn Hospital Center, 9 A.D.3d 41, 779 N.Y.S.2d 82 (2<sup>nd</sup> Dept. 2004)(records of the investigation of the incident, prior similar incidents, complaints regarding security breaches, and log books); Daniels v. City of New York, 291 A.D.2d 260 (1<sup>st</sup> Dept. 2002)(prior similar accidents for three years prior to the accident); Lancaster v. St. Luke's, 295 A.D.2d 321 (2<sup>nd</sup> Dept. 2002)(prior similar accidents); Hall v. 130-10 Food Corp., 254 A.D.2d 22 (1<sup>st</sup> Dept. 1998)(prior similar accidents); Coan v. LIRR, 246 A.D.2d 569 (2<sup>nd</sup> Dept. 1998)(records of prior similar accidents); Hardy v. Tops, 231 A.D.2d 879 (4<sup>th</sup> Dept 1996)(incident reports regarding other falls and records of complaints; maintenance and inspection schedule); Lestingi v. City of New York, 209 A.D.2d 384 (2<sup>nd</sup> Dept. 1994)(prior similar accidents); Herbert v. Sivaco, 289 A.D.2d 71 (1<sup>st</sup> Dept. 2001)(prior complaints); Dukes v. 800 Grand Concourse Owners, Inc., 198 A.D.2d 13 (1<sup>st</sup> Dept. 1993)(prior roof leaking in other units); Taylor v. John Doe, 167 A.D.2d 984 (4<sup>th</sup> Dept. 1990)(prior similar accidents); Parry v. Pyramid Crossgates Co., 158 A.D.2d 787 (3<sup>rd</sup> Dept. 1990)(other incidents in fifteen year period); Ielovich v. Taylor Mach. Works, Inc., 128 A.D.2d 676 (2<sup>nd</sup> Dept. 1987)(past accidents); Boone v. Supermarket General Corp., 109 A.D.2d 771 (2<sup>nd</sup> Dept. 1985)(other slips and falls); Alexson Mechanical Contracting, Inc. v. Honeywell, 101 A.D.2d 796 (2<sup>nd</sup> Dept. 1984)(customer complaints); Klatz v. Armor Elevator Co., Inc., 93 A.D.2d 633 (2<sup>nd</sup> Dept. 1983)(other accidents); Jonmaire v. West Seneca, 120 A.D.2d 928 (4<sup>th</sup> Dept. 1986)(Other accidents);**

Indilicato v. Pacific Pool Industries, Inc., 95 A.D.2d 886 (3<sup>rd</sup> Dept. 1983)(claims, correspondence and legal pleadings); Ragona; Petty v. Riverbay Corp., 92 A.D.2d 525 (1<sup>st</sup> Dept. 1983)(other actions, records of other assaults, bills, correspondence, repair and maintenance records); Mott v. Chesbro-Whitman Co., 87 A.D.2d 573 (2<sup>nd</sup> Dept. 1982)(other claims).]

12. ....

13. ....

14. ....

15. All documents reflecting the number, type and placement of floor mats, if any, in Defendants' inventory on the date of Plaintiff's accident and earlier. [Paragraph 6 of the Bill of Particulars alleges, *inter alia*, inadequate mats.]
16. All documents, consisting of, but not limited to, prior notification maps, complaints, correspondence, computer data and printouts, index book and log entries and inspection reports, of complaints received by any Defendant, concerning the condition of the subject Premises prior to and including the date of the accident. [See Mann v. Cooper, 816 N.Y.S.2d 45 (1<sup>st</sup> Dept. 2007)(pleadings and Bills of Particulars for similar litigation; customer complaints); Dorsa v. National Amusements, Inc., 6 A.D.3d 652 (2<sup>nd</sup> Dept. 2004)(maintenance records regarding recurrent conditions); Marte v. Brooklyn Hospital Center, 9 A.D.3d 41, 779 N.Y.S.2d 82 (2<sup>nd</sup> Dept. 2004)(records of the investigation of the incident, prior similar incidents, complaints regarding security breaches, and log books); Daniels v. City of New York, 291 A.D.2d 260 (1<sup>st</sup> Dept. 2002)(prior similar accidents for three years prior to the accident); Lancaster v. St. Luke's, 295 A.D.2d 321 (2<sup>nd</sup> Dept. 2002)(prior similar accidents); Hall v. 130-10 Food Corp., 254 A.D.2d 22 (1<sup>st</sup> Dept. 1998)(prior similar accidents); Coan v. LIRR, 246 A.D.2d 569 (2<sup>nd</sup> Dept. 1998)(records of prior similar accidents); Hardy v. Tops, 231 A.D.2d 879 (4<sup>th</sup> Dept 1996)(incident reports regarding other falls and records of complaints; maintenance and inspection schedule); Lestingi v. City of New York, 209 A.D.2d 384 (2<sup>nd</sup> Dept. 1994)(prior similar accidents); Herbert v. Sivaco, 289 A.D.2d 71 (1<sup>st</sup> Dept. 2001)(prior complaints); Dukes v. 800 Grand Concourse Owners, Inc., 198 A.D.2d 13 (1<sup>st</sup> Dept. 1993)(prior roof leaking in other units); Taylor v. John Doe, 167 A.D.2d 984 (4<sup>th</sup> Dept. 1990)(prior similar accidents); Parry v. Pyramid Crossgates Co., 158 A.D.2d 787 (3<sup>rd</sup> Dept. 1990)(other incidents in fifteen year period); Ielovich v. Taylor Mach. Works, Inc., 128 A.D.2d 676 (2<sup>nd</sup> Dept. 1987)(past accidents); Boone v. Supermarket General Corp., 109 A.D.2d 771 (2<sup>nd</sup> Dept. 1985)(other slips and falls); Alexson Mechanical Contracting, Inc. v. Honeywell, 101 A.D.2d 796 (2<sup>nd</sup> Dept. 1984)(customer complaints); Klatz v. Armor Elevator Co., Inc., 93 A.D.2d 633 (2<sup>nd</sup> Dept. 1983)(other accidents); Jonmaire v. West Seneca, 120 A.D.2d 928 (4<sup>th</sup> Dept. 1986)(Other accidents); Indilicato v. Pacific Pool Industries, Inc., 95 A.D.2d 886 (3<sup>rd</sup> Dept. 1983)(claims, correspondence and legal pleadings); Ragona; Petty v. Riverbay Corp., 92 A.D.2d 525 (1<sup>st</sup> Dept. 1983)(other actions, records of other assaults, bills, correspondence, repair and maintenance records); Mott v. Chesbro-Whitman Co., 87 A.D.2d 573 (2<sup>nd</sup> Dept. 1982)(other claims).]
17. Printouts of computer data identifying alleged defects at the subject Premises within

the three years prior to the date of Plaintiff's accident. [See 16 above.]

18. ...
19. ...
20. Payroll records for the subject location for the date of the accident, and personnel files for all employees employed at the Premises on the date of the accident. [At the last conference, the Federal Court ordered that these be produced. Plaintiff alleges negligent hiring and retention in the Bill of Particulars.]
21. ..
22. ....
23. Records of subsequent accidents, and subsequent remedial action such as cleaning.

**Finally, on the second document on the disc you produced entitled "Topic: Slips, Trips and Falls" (copy attached), there is a photo referenced on page 2 that, curiously, was not provided. Please provide this photo as it clearly shows that Defendants' own policy required that spills be blocked by store personnel. By the store's own policy, simply leaving a sign is not good enough for the store's safety.**

Very truly yours,

*James Hoffmaier*

James Hoffmaier

CC: Clerk To Magistrate Judge Francis  
Chambers of Justice Francis  
United States District Court, Southern District  
500 Pearl Street  
New York, N.Y. 10007